

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4429 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No.

JAYANTIBHAI KESARBHAI PATEL

Versus

DY.COLLECTOR LAND ACQUISITION AND REHABILITATION

Appearance:

MR MUKESH R SHAH for Petitioners

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/08/1999

ORAL JUDGEMENT

(Per: J.M.Panchal,J.)

Rule. Mr.H.L.Jani, learned Assistant Government
Pleader waives service of notice of Rule on behalf of the
respondents. At the joint request of learned advocates

appearing for the parties, the petition is taken up for hearing today.

.RS 2

#. By means of filing this petition under Sec.226 of the Constitution of India, the petitioners have prayed to issue a Writ of Mandamus or any other appropriate Writ, order or direction to quash and set aside order dated February 8, 1999 passed by the respondent No.1 by which application submitted by the petitioners under Sec.28-A of the Land Acquisition Act, 1894 ('the Act' for short) is rejected on the ground that the petitioners had accepted the amount of compensation which was awarded with consent of the petitioners and, therefore, the petitioners cannot be regarded as aggrieved persons within the meaning of said section.

#. The petitioners were owners of land bearing survey No.44/47 situated at Village Kesarpura, Kampa Taluka Himmatnagar, District Sabarkantha. A proposal was received by the State Government to acquire agricultural lands of Village Kesarpura for public purpose of Guhai Jalagar Yojana. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of Village Kesarpura including the land belonging to the petitioners were likely to be needed for the said public purpose. Accordingly, notification under Sec.4(1) of the Act was issued which was published in Government Gazette on June 17, 1980. Those whose lands were sought to be acquired were served with notices under Sec.4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, necessary report was forwarded by the Land Acquisition Officer to the State Government as contemplated by Sec.5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands which were specified in the notification published under Sec.4(1) of the Act were needed for public purpose of Guhai Jalagar Yojana. Therefore, declaration under Sec.6 was made which was published in Government gazette on November 11, 1980. Interested persons were thereafter served with notices for determination of compensation. The Land Acquisition Officer by his award dated January 19, 1983 alleged to have been made under Sec.11(2) of the Act offered compensation to the claimants at the rate of Rs.6,500/per acre for irrigated lands and Rs.4,500/- per acre for non-irrigated lands. Some of the claimants were of the opinion that offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing and required the Land

Acquisition Officer to refer the matter to the court for determination of compensation. Accordingly, references were made to the District Court, Sabarkantha at Himmatnagar which were numbered as Land Reference Cases Nos.854/87 to 863/87, 1448/89 and 1449/89. Those reference applications were contested by the Deputy Collector and Land Acquisition Officer inter alia on the ground that the award was made with consent of the claimants and, therefore, reference applications were not maintainable. However, the Reference Court by judgment and award dated July 2, 1993 enhanced compensation to Rs.580/- per Are. It may be stated that the present petitioners had not made application to the Land Acquisition Officer under Sec.18 of the Act. As an award was made by the court under Part III after coming into force of Sec.28-A of the Act granting the amount of compensation in excess of the amount awarded by the Land Acquisition Officer under Sec.11 of the Act, the petitioners moved application under Sec.28-A of the Act on September 28, 1993 and requested the respondent No.1 to re-determine the amount of compensation on the basis of amount of compensation awarded by the Court. A copy of the said application is produced by the petitioners at Annexure-B to the petition. The said application was not considered by the respondent No.1 at all and, therefore, the petitioners were constrained to move the High Court by way of filing Special Civil Application No.309/1998. The court by an order dated November 6, 1998 directed the respondent No.1 to hear the petitioners and decide the application submitted by the petitioners under Sec.28-A of the Act within a period of two months from the date of production of certified copy of the order. The order passed by the High Court is produced by the petitioners at Annexure-C to the petition. Pursuant to direction of the High court, the respondent No.1 heard the petitioners and rejected application submitted by them under Sec.28-A of the Act by an order dated February 8, 1999 on the ground that the petitioners had accepted the amount under the award which was made with the consent of the petitioners and, therefore, application under Sec.28-A of the Act was not competent. The order passed by the respondent No.1 which has given rise to the present petition is produced by the petitioners at Annexure-E to the petition. Though the respondents are duly served, no reply is filed controverting the averments made in the petition.

#. The learned counsel for the petitioners submitted that the petitioners are aggrieved persons within the meaning of Sec.28-A of the Act when an award was made by the court under Part III of the Act enhancing

compensation and, therefore, application under Sec.28-A could not have been rejected on the ground that the petitioners had accepted amount of compensation under a consent award. On the other hand, Mr.H.L.Jani, learned Asstt. Govt. Pleader submitted that the petitioners had accepted amount of compensation under a consent award and, therefore, the respondent No.1 was justified in not entertaining application submitted by the petitioners under Sec.28-A of the Act.

#. We have heard learned counsel for the parties.

It is relevant to note that the lands belonging to the petitioners and others were acquired pursuant to publication of preliminary notification under Sec.4(1) of the Act on June 17, 1980. The Land Acquisition Officer had made common award dated January 19, 1983 determining market price of the lands acquired. Though in the preamble of the award, it was stated that the market value was determined with the consent of claimants and claimants had submitted necessary agreements, the Land Acquisition Officer himself had entertained applications submitted by some of the claimants under Sec.18 of the Act and referred those applications to the District Court for determination of appropriate compensation. While making references, it was never claimed by the respondent No.1 that the claimants had consented to accept the award and, therefore, reference applications were not competent. As noted earlier, in reply to the reference applications, it was pleaded by the acquiring authorities that in view of consent award, the references were not maintainable, but no evidence was led either by the respondent No.1 or by the respondent No.2 to establish that the award was rendered with the consent of claimants and, therefore, reference applications were not maintainable. After taking into consideration the evidence led by the parties and hearing their learned counsel, the Reference Court enhanced compensation by award dated July 2, 1993 which is produced by the petitioners as Annexure-A to the petition. In Babuaram and others Vs. State of UP and another (1995) 2 SCC 689, the Supreme Court has interpreted expression "person aggrieved" in Sec.28-A(1) to mean that one who has suffered a legal grievance because of a decision pronounced by the Civil Court giving higher compensation for the acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Sec.18 read with Sec.31 of the Act resulting in affectation of his pecuniary interest in his acquired land directly and adversely of that award by the Collector made under Sec.11 is an aggrieved person. The Supreme Court has emphasized that if an owner fails to

avail of the right and remedy under Sec.18(1), Sec.28-A(1) grants an extra right and remedy for re-determination of the compensation payable to him for his land on the basis of an award of the Court giving higher compensation to an owner of another land covered by the same notification under Sec.4(1) and under the same award of Collector. In the said decision, it is ruled that the payment of higher compensation to his neighbouring landowner makes an applicant an aggrieved person entitling him to claim re-determination of the compensation payable to him for his land and the person aggrieved, therefore, in this context would mean a person who had suffered legal injury or one who has been unjustly deprived or denied of something which he would be interested to obtain in the usual course or similar benefits or advantage or results in wrongful affectation of his title to compensation. In view of principle authoritative pronouncement of law by the Supreme Court, it is evident that any interested person in the lands acquired under the same notification published under Sec.4(1) who failed to avail right and remedy under Sec.18(1) read with second proviso of Sec.31 becomes a person aggrieved under Sec.28-A(1) of the Act when the owner of the another land covered by the same notification is awarded higher compensation by the Civil Court on a reference got made by him under Sec.18. Therefore, the respondent No.1 was not justified in rejecting the application submitted by the petitioners under Sec.28-A of the Act on the ground that they were either not aggrieved persons or had accepted the amount of compensation under a consent award. There is nothing on the record which indicates that the award of the Land Acquisition Officer dated January 19, 1983 was made under Sec.11(2) of the Act. Having regard to the facts of the case, the petitioners will have to be regarded as aggrieved persons within the meaning of Sec.28-A of the Act and, therefore, they were entitled to file application under Sec.28-A(1) of the Act.

#. Moreover, the learned counsel for the petitioners has produced a circular dated April 28, 1999 issued by the Government on the record of the case. In the said circular, a reference has been made to a case of Babuaram and others (supra) and it is laid down for all concerned that even if a claimant has accepted the amount of compensation under an award made by the competent authority without protest, his application under Sec.28-A(1) should be entertained and benefit of higher compensation given to others by the Civil court should be given to such claimant also. Thus, in view of the contents of circular dated April 28, 1999 also, the

finding recorded by the respondent No.1 that the application submitted by the petitioners under Sec.28-A is not maintainable as they had accepted the amount of compensation without protest will have to be set aside.

#. For the foregoing reasons, the petition succeeds.

Order produced at Annexure-E to the petition is hereby quashed and set aside. The respondent No.1 is hereby directed to re-determine compensation payable to the petitioners on the basis of the amount of compensation awarded by the Court in Land Reference Case Nos.854/87 to 863/87, 1448/89 and 1149/89 as early as possible and preferably within two months from the date of production of certified copy of this order. The respondent No.1 is further directed to make payment of re-determined amount of compensation to the petitioners preferably within two months from the date of re-determination of compensation by him. Rule is made absolute accordingly with no orders as to costs.

...